particular configuration as being that most appropriate for our circumstances.

4. "Parties should explain the circumstances, if any, when termination of a collocation agreement should be explicitly prohibited by the LEC, the interconnector, or both parties. For example, if a party argues that termination should be prohibited during the pendency of a Section 208 proceeding, it should explain the point in the proceeding when termination should no longer be allowed, and at what point in the proceeding termination should be permitted again."[150]

There is no point during the term of the interconnection agreement when the agreement should not be able to be terminated either because the term has expired and either party is relieved of any tariff/contractual obligations; or because the LEC needs the space for its own business purposes; or because the interconnector has materially breached the agreement.

Those commentors that suggest that no termination of EIC service should be permitted during the pendency of a complaint proceeding misread both the law and Commission precedent. Furthermore, they attempt to establish themselves in some kind of superior position to all other LEC customers.

There is no precedent for arguments that, as a matter of blanket tariff provision or Commission policy, no termination of a license (i.e., a service offering) should be permitted while a Section 208 complaint proceeding is pending. The Commission is well aware that LECs are reluctant to discontinue services to other carriers. However, it has held that carriers are not

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[150] Id. at 30, Item (d).

prohibited from discontinuing service to other carriers when offending carriers violate tariff provisions.[151]

A determination that no discontinuance or termination of service can occur during the pendency of a Section 208 proceeding is inappropriate as a matter of Commission policy. First, it creates disparate treatment between a body of customers called "interconnectors" and all others. Secondly, such a policy would amount to a per se stay of what might well be appropriate LEC conduct. Third, it would establish a procedural structure/vehicle whereby Section 208 complaints would, undoubtedly, be filed at every threatened disconnection -- regardless of the righteous nature of the LEC allegations of tariff noncompliance.

The current process under which a complaining carrier always bears the burden of proof with regard to a complaint, as well as the burden of proof associated with a request that any threatened LEC action be stayed is the appropriate one. There is nothing about EIC Service that requires that established Commission practice and policy be changed for "interconnector" customers.

5. "U S West and other LECs whose tariffs permit them to place liens on the equipment of interconnectors should justify why they believe such provisions are reasonable. Parties opposing equipment liens should explain why such liens are unreasonable, and should describe the policies they propose as an alternative,

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[151]See, e.g., Mocatta Metals Corp. et al., 54 F.C.C. 2d 104, 119 (Conclusion 16)(1975). The Commission has, of course, cautioned that such should be done carefully. Prudence might well require that terminations not be done during the pendency of bona fide disputes.

> why such policies are reasonable, and how those policies could be implemented."[152]

U S WEST's EIC Tariff contains an "equipment lien" provision which replicates a not-uncommon provision found in contractual real estate contracts. It is not a provision, like a deposit provision, that can be used to assure performance. Rather, it is a provision to render U S WEST more "whole" should an interconnector default on its promise to comply with our EIC Tariff provisions.[153] The provision is eminently reasonable and should be sustained.

Physical collocation amounts to occupancy of space. If an interconnector fails to pay for service (either its EIC service or any other service), U S WEST's ability to disconnect EICTs simply does not constitute an appropriate or comprehensive remedy.[154] The real estate market has established ways of dealing with nonpayment and/or breach of contractual obligations: Landlords routinely reserve to themselves the right to re-occupy space; and often maintain a lien on all personal

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[152]Investigation Order at 30, Item (e).

[153]Thus, TCG is incorrect when it argues that U S WEST's lien "goes far beyond a deposit in threatening a customer's business operations[.]" TCG at App. A, Item 21. A deposit is an up-front payment, securing future performance, at the initiation of a relationship. A lien is acted upon only after a customer defaults, sometime into the relationship, on its agreement. Especially with the modifications to the lien provision that U S WEST herein outlines, it is confident that the equipment lien provision is eminently reasonable.

[154]See further discussion of this matter above with regard to U S WEST's right of reoccupancy.

property/fixtures found on the leased space. In the event that a person occupying the space refuses to comply with all contractual obligations, the landlord can recoup some of its monetary compensation through the sale or re-use of the personal property/assets and can seek to re-let the real estate.

With regard to EIC, in particular, U S WEST can exercise its equipment lien in case of an interconnector's material breach,[155] to put another interconnector in service quickly, thus assuring the continuation of revenues to U S WEST and minimizing the extent of end-user customer disruption. Such a provision represents precisely the kind of careful and prudent management of real estate that an entity allowing a third party to collocate on its premises would be expected to demonstrate.

It would be imprudent for U S WEST to refrain from availing ourselves of such protection, given that we can foresee instances in which such a provision could/would be utilized. Doing so would substantially reduce future costs/expenses associated with long and protracted litigation.

I. "Are the LECs' provisions regarding termination of collocation arrangements in the event of a catastrophic loss reasonable?"[156]

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[155]See U S WEST Tariff F.C.C. No. 1 at § 2.1.8(B)(5) stating that U S WEST will only exercise this lien prerogative upon the happening of a material breach.

[156]Investigation Order at 30(I).

U S WEST's catastrophe provisions[157] are in the nature of limitation of liability provisions with regard to a specific event: the happenstance of a catastrophe. U S WEST could have never addressed the circumstance of a catastrophic event in our EIC Tariff, relying solely on notice provisions,[158] limitation of liability provisions,[159] and service restoration provisions.[160] The result would have been that U S WEST would have had no liability to the interconnector, no responsibility for moving the interconnector's equipment (or finding alternative space), and only the obligation to provide a credit for certain service disruptions -- but no obligation to restore service pursuant to any particular deadline.

U S WEST inserted its casualty/catastrophic provision to provide interconnectors with information as to how we intended to proceed in the event of a casualty. We provide information regarding notification time frames; anticipated repair benchmarks; and commit to working with the interconnector to find alternative space for the interconnector to move into (at U S WEST's expense) should the interconnector desire.[161]

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[157]See U S WEST Tariff F.C.C. No. 1 at § 2.1.3(D).

[158]See id. at § 21.4.1(H).

[159]See, e.g., id. at §§ 2.1.3(A)(4), 2.1.3(C)(3). And see our extended discussion regarding these provisions at Part L, infra.

[160]See, e.g., U S WEST Tariff F.C.C. No. 1 at § 2.4.4(B)(12).

[161]In U S WEST's EIC Tariff, we propose to advise an interconnector within 45 days of the following: Whether the

(continued...)

Our EIC Tariff catastrophe provision was, like other provisions in our EIC Tariff dealing with our real estate assets, modelled after those commonly found in our real estate contracts. The catastrophe provision is simple, honest and reasonable.

In the event that a U S WEST central office is damaged, and the cause of the damage is not the result of the interconnector's conduct, U S WEST has proposed a reasonable course of action: if the interconnector does not wish to remain in the Telephone Company's space that was affected by the casualty, U S WEST will assume reasonable costs associated with moving the interconnector to another space within the same central office or to another central office (assuming at all times the availability of space).

Clearly, there is nothing unreasonable in this provision. Yet the Bureau would seek to convert this reasonable proposal into a convoluted and complex service restoration requirement, with mandated time-lines for service relocation.

While U S WEST might, in certain circumstances and for sound business reasons, commit to service guarantees[162] and time-lines,[163] such a commitment would emanate from U S WEST's own

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[161](...continued)
damage will be repaired at all; whether the damage will be repaired in 90 days; whether the damage will take longer than 90 days to repair. In all cases, where the damage is not caused by the interconnector, and there is space available, U S WEST provides the interconnector with the option to move. U S WEST assumes the cost of reasonable moving charges.

[162]Compare U S WEST Tariff F.C.C No. 1 at § 2.4.4.(B)(11).

[163]Compare id. at § 5.2.1(C).

initiative regarding market demands. Such requirements are inappropriately mandated by a bureaucratic regulatory regime.

Additionally, such guarantees are not without their price. If the Bureau does compel U S WEST to abide by the kind of service restoration structure suggested in this inquiry, the Bureau should be aware that the cost (ergo, the price) of EIC service will increase. Tariffs reflecting that increase would be filed shortly after the Bureau's prescription.

In total, the Bureau's suggestions with regard to catastrophe provisions are overreaching. It makes such suggestions without benefit of knowledge of the facts or scope of any particular catastrophe and without ownership of or responsibility for the real estate involved or the businesses associated with that property. In total, they would deprive U S WEST as an owner of property of some of the most fundamental decision-making associated with that property: what to do, and when to do it, with regard to a catastrophic event and/or casualty.

As an initial matter, in no event should a model be developed that requires a LEC to assume any financial obligation with regard to the interconnector where the source of the catastrophe is the fault of the interconnector.

Second, in no event should the Bureau require that central office space be restored nor should a time-line for restoral be established. Such a decision should lie within the sound discretion of the LEC. While it is not unreasonable to require

that a LEC provide some kind of guidance as to the kind of time frames they would consider reasonable for such a process, it is unreasonable to mandate that the LECs move occupying interconnectors under some kind of strict time-line.

Third, a LEC should have no mandated regulatory obligation to move an interconnector from one premises to another (either in or outside a LEC central office) for free. There is a cost associated with such a move, and it should remain within the discretion of the LEC to determine whether such relocation will be for free or for a fee.

In conclusion, in the matters of catastrophes and insurance, the Bureau is no expert. It is not a land owner, has never considered provisions such as these in traditional common carriage tariffs, and has not reviewed or been a party to common real estate lease contracts.

The Bureau is in no position to prescribe for the LECs how risks associated with property ownership and management should be handled or how catastrophes to a part or all of their property should be handled. Any action by the Bureau in this area would not only be overreaching, but it would be arbitrary and capricious.

U S WEST encourages the Bureau to refrain from prescribing a tariff model such as that suggested below.

1. "LECs should justify the time period in their tariff within which they will inform interconnectors of their plans to rebuild or relocate in the event of catastrophic loss. Parties that oppose a particular notice period should explain why they believe it is

unreasonable and should suggest a period they consider to be reasonable."[164]

Certain parties objected to the fact that U S WEST has committed to giving interconnectors notice, within a 45-day period, of whether it will be repairing/rebuilding property damaged as a result of casualty.[165] It is thought that allowing U S WEST 45 days to advise an interconnector about a proposed course of conduct in the event of a casualty is too generous.

Suggestions were made that the time for notification of U S WEST's intention to repair/rebuild should be reduced to not more than 30 days after the suffered casualty.[166] Others argued that U S WEST's EIC Tariff casualty provision, in conjunction with the concomitant EIC charge-abatement if the problem will continue beyond 90 days, is unreasonable.[167]

U S WEST certainly understands and appreciates a customer's desire to be back in business as soon as possible. It is a desire that U S WEST, as the fundamental network provider, shares. And, U S WEST will work in close cooperation with all our customers, including interconnectors, to make that possible.[168]

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[164]Investigation Order at 31, Item (a).

[165]See U S WEST Tariff F.C.C. No. 1 at § 2.1.3(D)(1).

[166]See ALTS, Appendix D (U S WEST), at 1-2.

[167]See TCG at App. A, Item 18.

[168]See U S WEST Tariff F.C.C. No. 1 at § 2.1.11. Compare id. at § 2.3.9.

At the same time, U S WEST is not currently in a very good position to know how much decisional/notification time is actually required to respond and set upon a constructive course of action with regard to a central office casualty, where there are third parties occupying the premises. Our initial feeling is that reducing U S WEST's suggested notification period from 45 days to 30 days is fairly immaterial and might not actually work to the benefit of interconnectors.

U S WEST is bound to know more about its rebuilding plans after 45 days, than after 30. Thus, it is possible that a 30-day notification might communicate nothing more than "we don't know." But, to be frank, the same might be true of the 45-day commitment.[169]

2. "Parties should also discuss whether LECs should be required to place language in their tariffs requiring that: (1) where an interconnector's space is not usable due to a catastrophic event, but the central office is, the LEC shall provide alternative facilities within the CO within three days; the LEC shall be responsible for payment of all repairs to the collocation space; no nonrecurring charges shall be applied to the interconnector in connection with the service rearrangements and other changes necessitated by the accident; and the interconnector should have the right to terminate its temporary collocation arrangement without charge and relocate to another central office without charge, if a permanent collocation space cannot be provided within 90 days; and (2) where both the interconnector's space and the CO is unusable, the LEC should be required to provide alternative facilities in another CO within seven days; the LEC should be responsible for repairs to the collocation space and should restore the

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[169]For example, a catastrophe along the lines of the World Trade Center bombing will probably involve months of decision-making about if, when, and how to repair/rebuild.

> interconnector's facility within the same time frame as its other repairs to the facility; no nonrecurring charges should be applied to the interconnector in connection with the service rearrangements and other changes necessitated by the accident; and the interconnector should have the right to terminate its original collocation arrangement without charge and relocate to another central office without charge if a permanent collocation space in the original central office cannot be provided within ninety days. Parties should comment on whether any other provisions regarding interconnectors and catastrophic loss should be included in the LECs' tariffs, and should specify why they believe the provisions they support are reasonable and why those they oppose are not. Finally, parties should address whether and how such provisions should be modified if the interconnector is responsible for causing the catastrophic event."[170]

Where the Entire Central Office is not Destroyed but the Collocation Space Is

In addition to the impropriety of this kind of regulatory insinuation into the proprietary and business affairs of the LECs, there are two specific aspects of the Bureau's "suggestion" that are troublesome: First, that the LEC, if it is so disposed, should not recover costs associated with moving an interconnector as a result of casualty.[171] Second, that a LEC should have certain established time-lines by which it must act with regard to casualty relocations. No other customer is accorded the kind of favored treatment suggested by the Bureau, and the Bureau

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[170] Investigation Order at 31-32, Item (b).

[171] It should go without saying that if the interconnector is the source or reason for the catastrophe, that the LEC should have no obligation to pay for the relocation of the interconnector.

sheds no light on facts that would justify such provisions with regard to interconnectors.[172]

The Bureau's suggestion that a LEC should not impose a charge on an interconnector required to move as a result of a casualty ignores the reality that costs will be incurred. If there were no interconnectors in the LEC central office that was subject to partial destruction, there would be no cost of any particular kind of reclamation of the space and no attendant temporary moves. It is only because those third parties are in the office that the matter even comes up. Moving expenses, in the event of a casualty or catastrophe (or for any other reason requiring relocation), are something an interconnector can (and perhaps should) insure against, as it does other kinds of risks that might result in damage to its equipment and/or property.

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[172]It is clear, throughout the text of the matters under inquiry by the Bureau, that the Bureau seeks to walk a difficult line with regard to LEC "common carriage" service obligations and its instant compelled entry into the real estate business. In the case of most customers, a destroyed central office would leave customers out of service for some period of time, as circuits, etc. were moved to other offices. In the case of interconnectors, a destroyed central office also deprives them of their space occupancy. Thus, the Bureau is interested in finding them alternative space (like finding other customers circuits an alternative central office).

However, LECs are not subject to rigid service restoration guarantees by the Commission. And, they are most certainly not regulated with regard to where and how service is restored to customers (from the same -- undestroyed -- part of a central office or from another central office). The Bureau should not insinuate itself into this aspect of a LEC's business operation without a demonstration that there is widespread abuse/dissatisfaction with regard to service restorations in the event of a casualty or an outage.

The suggestion that a LEC "find" alternative space for an interconnector within three days ignores any (and all) facts associated with the particular catastrophe in question. Even if damage is only done to a portion of the central office (i.e., that portion occupied by interconnectors), that does not mean that there would be "other" available space in the central office to house the dislocated interconnectors (and there may be many of them). The suggested time frames certainly do not necessarily provide sufficient time for a LEC to find other space in other central offices for the interconnector (or a couple of interconnectors) -- a task that could be fairly imposing and could well divert LEC attention away from resolving the casualty problem itself.

Finally, the Bureau's suggestion that a "LEC should be responsible for [the] repairs to the collocation space," could be read as a mandate that the collocated space be repaired. That would be overreaching. It should always remain within the discretion of the LEC -- the property owner -- whether the central office space will be repaired (and how). Should the LEC decide that the space will be repaired, the particulars of who should be held responsible for the repairs should be a matter of contract (i.e., tariff) between the affected LEC and the interconnector. Some LECs might assume responsibility for this risk/financial obligation; and some might require the interconnector to insure against such a loss and contribute

(through indemnification and/or subrogation) to the cost of repair.

Where the Entire Central Office is Affected by Casualty

The Bureau's suggestion with regard to possible tariff language when an entire LEC central office is destroyed goes beyond all bounds of propriety. At best, it represents regulatory insinuation at its most galling. Without any facts about what the casualty/catastrophe was/is, without knowing how many customers (including interconnectors) are affected, without knowing anything about the extent of alternative providers and/or available real estate, the Bureau is in no position to tell LECs that they have an "obligation" to rebuild a partially- or fully-destroyed central office. At worst, the Bureau's suggestions deprive U S WEST, as an owner of real estate, of some of the most fundamental decisions associated with that proprietary capacity.

Given the extent of the casualty and the number of affected interconnectors, the Bureau's suggestions take on different relevant considerations.

U S WEST's EIC Tariff allows for abatement of EIC charges in the result of a catastrophe.[173] Thus, an interconnector will not be charged for services that cannot be rendered in the central office which it occupied. That is certainly appropriate.

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[173] See U S WEST Tariff F.C.C. No. 1 at § 2.1.3(D)(3)-(4), (E).

A LEC having alternative usable EIC space in another central office will, undoubtedly, attempt to match a dislocated interconnector up with available space. In U S WEST's opinion, this is just good business and we have agreed to do just that.

That is not to say, however, that a LEC should have to move the interconnector to another space, for free; nor that it should be required to "set up" new EIC service in that central office without collecting the tariffed set-up charge. It should not have to assume such philanthropic obligations.

U S WEST has clearly outlined in its EIC Tariff what our obligations are with regard to a catastrophe. To the extent that an interconnector desires greater protection against the risk of such an event, an interconnector should insure against it. The Bureau should not convert the LECs into both landlords and insurers in one regulatory docket.

Furthermore, the time-line suggested by the Bureau is inappropriate.[174] A LEC may be in no position to provide alternative space; or it may not be in a position to do so within seven days. Depending on the extent of the catastrophe, it is quite conceivable that LEC personnel will be dedicated to a determination of what will happen to the destroyed central office

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[174]If any "timeliness" requirement were appropriate, which U S WEST does not concede, then language in the nature of "as soon as reasonably practical or possible" would be sufficient. While some would argue that such language is too broad, such language is commonly found in traditional contracts where a good faith obligation attends to performance expectations. Nothing more is required of a tariff, especially given the availability of the Section 208 complaint process.

and will not be immediately available to inventory alternative space arrangements.

The Bureau also suggests that if a LEC rebuilds its central office that it rebuild interconnection/collocation space at the same time. While it is clear that LECs have an obligation to plan their future central offices with an eye toward collocation demand, it is not clear that a LEC who decides to rebuild a destroyed central office should actually attempt tandem construction. "Collocation space" is space not used by the LEC in the delivery of general telecommunications services to the vast majority of the population. Depending on the extent of the destruction, and the service needs of the general population, tandem construction might not be in the public interest. This is clearly a matter that should be determined on a case-by-case basis.

A LEC's tariff should reflect the terms and conditions pursuant to which the LEC agrees to offer a service. A LEC should not have to unconditionally "promise" to relocate a dislocated interconnector for free; nor do the relocation in seven days; nor rebuild an interconnector's space at the same time it rebuilds its central office structure; nor be put in a position to have to request a waiver of its own tariff provision, if it cannot comply with promises it made only after regulatory bureaucratic prescription.

U S WEST will work closely with interconnectors should any kind of casualty occur, regardless of the cause. It will notify

intervenors as soon as the decision is made about whether the space will be repaired or rebuilt[175] and will offer possibilities for other EIC service. We believe that our tariff provision gives us that kind of flexibility and that in its specifics it is fair and reasonable.[176]

J. "Are the LECs' relocation provisions reasonable?"[177]

1. "LECs should describe their policy regarding providing advance notice to the interconnector that the LEC intends to relocate the interconnector's space or equipment. LECs whose tariffs do not contain notice provisions for this occurrence should justify why the absence of those provisions is reasonable. Parties objecting to the notice provisions in the LEC tariffs should explain why the alternatives they offer are more reasonable than those already in the tariffs."[178]

2. "LECs should specify the conditions under which they will or will not charge the interconnector for the relocation of the interconnector's facilities. Parties offering guidelines regarding this issue should explain why their guidelines are reasonable."[179]

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[175]Should this occur, for example, in ten days, U S WEST would advise interconnectors. We would be agreeable to revising our tariffs to say that we would inform interconnectors "as soon as possible but no later than 45 days" of our plans. But, regardless of whether this is in our tariff, we would do so as a matter of good business practice.

[176]This provision is also one crafted from U S WEST's standard central office space agreements. We see no persuasive reason to have some persons occupying our central offices under one casualty provision and others subject to a different provision.

[177]Investigation Order at 32(J).

[178]Id. at 33, Item (a).

[179]Id. at Item (c).

U S WEST has no present intention of unilaterally relocating an interconnector's leased physical space or equipment. In certain circumstances, U S WEST has offered to provide interconnectors with the option of moving their space or their equipment, at U S WEST's expense. Those circumstances involve the happening of a casualty[180] or when U S WEST reclaims its property.[181]

In the case of a casualty, U S WEST will provide an interconnector with information, within 45 days, of U S WEST's intentions regarding the rehabilitation of the affected space. This notice is not a notice to vacate, although the interconnector might choose to do so. If it does so choose (and if the interconnector was not the cause of the casualty), U S WEST "will assume reasonable costs associated with moving the interconnector to another leased space in a different Telephone Company property (if such space is available)."[182]

With regard to U S WEST's right to reclaim our property in the event of certain happenings (including "any lawful business reason associated with [U S WEST's] provision of services or employment of labor"), U S WEST will give the interconnector six months notice of the need to quit the premises. Should the interconnector be desirous of moving elsewhere, U S WEST "will

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[180]See U S WEST Tariff F.C.C. No. 1 at § 2.1.3(D)(5).

[181]See U S WEST EIC Tariff at § 21.4.1(H).

[182]U S WEST Tariff F.C.C. No. 1 at § 2.1.3(D)(5).

reimburse the interconnector for reasonable direct costs and expenses in connection with" the move.

In other instances in which a move might be warranted or desirable, the "notice" provided and the costs associated with the relocation or reestablishment of service would follow in natural course. If, for example, the interconnector was in material breach, U S WEST would provide the requisite notices. Assuming the interconnector did not cure the breach and did vacate the premises, the interconnector would be required to establish new service from scratch. Similarly, if the interconnector decides, on its own initiative, to vacate the premises, a later decision to return to the central office would be treated as a new service. In neither case would U S WEST be "relocating" the interconnector; nor would we be contributing to the establishment of service.

> 3. "LECs should describe the conditions under which they will require that an interconnector's space or equipment be moved, either within a wire center or to another wire center. LECs using a blanket provision in their tariffs, rather than listing specific conditions, should justify why such a provision is reasonable. Parties suggesting guidelines regarding this issue should justify the reasonableness of their suggestions."[183]

U S WEST has provided the substance of this answer directly above. As stated, U S WEST will not "require" the interconnector to move, although we might require the interconnector to vacate the premises, in the event of a casualty or with regard to our

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[183] Investigation Order at 33, Item (b).

right of reclamation. The decision as to whether or not a "move" is desirable is left up to the interconnector.

U S WEST's right of reclamation is both specific (i.e., "an Act of God; in order to comply with any duly promulgated legislative or regulatory obligation imposed by a legitimate exercise of authority (including eminent domain); a sale, lease or vacation of the central office building") and broad ("or for any lawful business reason associated with [U S WEST's] provision of services or employment of labor").[184] U S WEST assumes by "blanket provision" the Bureau might be inquiring about the broader aspect of our stated reclamation right.[185]

It would be overreaching for the Bureau to reject a provision in a company tariff allowing it to reclaim its own property, given up only under regulatory compulsion, in those instances where the property is needed by the owner for purposes of its own service provisioning or with regard to its status as an employer. Indeed, a strong argument could be made that it would further violate the due process rights of the company involved.[186]

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[184]U S WEST EIC Tariff at § 21.4.1(H).

[185]U S WEST originally had this provision written as allowing us to reclaim our property for "good cause." The Bureau expressed some concern over the breadth of such a provision (although U S WEST remains of the opinion that it is one commonly used and well understood), so U S WEST revised the language as stated herein.

[186]U S WEST has taken the position that the Commission's entire expanded interconnection regulatory regime, to the extent that it involves the forced physical occupancy of LEC central

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K. "Are the LECs' insurance provisions reasonable?"[187]

U S WEST's insurance requirements are designed to accomplish three objectives: First, to protect U S WEST from unwarranted expenses and losses; second, to assure that the interconnector's property is appropriately insured; and, third, to assure that state insurance obligations are complied with. As a "deep pocket" defendant, it would be imprudent for U S WEST to leave the latter two concerns to chance or good intentions. The failure by U S WEST to require appropriate insurance coverage by interconnectors would be an open invitation to others (including interconnectors themselves) to embroil U S WEST in claims and processes that U S WEST has no business -- and no interest -- being involved in.

U S WEST requires certain insurance coverages to protect it, its employees, and its assets from actions that might result in bodily injury (including death), personal injury, property damage to third parties, other tenant's employees, etc. arising out of the provision of EIC on U S WEST's premises. Interconnectors are required to reimburse U S WEST for any damage they cause that might result in necessary repairs;[188] and to indemnify U S WEST

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[186](...continued)
offices, is a violation of U S WEST's due process constitutional rights. See Nos. 92-1619, et al., The Bell Atlantic Tel. Cos., et al. v. F.C.C. (D.C. Cir. Nov. 25, 1992).

[187]Investigation Order at 33(K).

[188]See U S WEST Tariff F.C.C. No. 1 at § 2.3.1(C)(2).

against certain losses.[189] It is, therefore, imperative that U S WEST assure itself that an interconnector's reimbursement and indemnity obligations are backed up by the purchase of appropriate types and amounts of insurance.

The requirement of insurance from interconnectors is based on sound risk management principles in that potential risks to an individual or corporation are identified, appropriately handled, and monitored. Requiring insurance from vendors, contractors, and lessees who come on U S WEST's premises is a prudent business practice in that it provides protection to owners of property (who are sometimes targets for claims solely due to "deep pockets"), against losses caused by such entities. Insurance guarantees interconnectors can pay for such losses.

1. "LECs should justify the levels and types of insurance coverage they specify for interconnectors in their tariffs. LECs that impose insurance requirements for automobiles, even though their tariffs specifically prohibit parking by interconnector personnel, should also justify these requirements. LECs having both interstate and intrastate collocation tariffs should also explain any differences between their tariffs concerning levels and types of coverage. Likewise, they should justify differences between the insurance levels and types of coverage LECs require of interconnectors and the levels and types of coverage that they hold themselves."[190]

U S WEST requires that interconnectors carry certain levels of insurance. In preparing our EIC Tariff insurance provisions, U S WEST met with certain of our insurance underwriters as to

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[189] See id. at §§ 2.1.3(A)(2), 2.3.8(B).

[190] Investigation Order at 35-36 ¶ 6(a).

what they would require by way of assurances, as U S WEST attempted to comply with and implement the Commission's Expanded Interconnection Order. Their responses are incorporated in U S WEST's insurance provisions.

In crafting the insurance requirements for EIC service, U S WEST established the minimum insurance requirements it deemed prudent with regard to the service offering. Good arguments could, in fact, be made that higher levels of insurance would themselves be quite reasonable. A review of U S WEST's insurance provisions demonstrates that they are not without precedent in the industry, and could even be considered less than certain carriers demand.[191] Those insurance levels are clearly reasonable.[192]

The types of insurance required by U S WEST[193] that interconnectors must carry include: All Risk Property (to cover the interconnector's personal property and "fixtures"); Statutory Workers' Compensation and Employers' Liability (or "Stop Gap") insurance (with limits of not less than $1M each accident; Commercial General Liability insurance (covering claims for third

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[191]Attached to this filing as Appendix I is a page from MFS' intrastate tariffs. As is obvious, MFS's insurance requirements exceed those currently proposed by U S WEST. In fact, they are almost double.

[192]"[T]he great majority of LECs recognize that comprehensive general liability insurance requirements should be no more than $2 million -- [t]wo of the LECs [including U S WEST], in fact, require comprehensive general liability insurance of half that amount." MFS at 37 & n.82.

[193]See U S WEST Tariff F.C.C. No. 1 at § 2.3.13(B).

party bodily injury, death, personal injury or property damage);[194] Comprehensive automobile liability insurance (not less than $1M per occurrence combined single limit for bodily injury and property damage);[195] Umbrella/Excess Liability insurance in the amount of $10M.

All Risk property insurance provides protection to the interconnector for losses to its property while on U S WEST's premises. U S WEST should not be responsible to insure interconnector property because it does not own the property and arguably lacks an insurable "interest."[196]

Workers compensation insurance is required by all states for employers who hire employees. As such, U S WEST's demand that an interconnector have such insurance does nothing more than recite the current state of the law. Such insurance provides payment of lost wages and medical expense to employees for injuries suffered while on the job. Because under some state's worker's compensation law, an employee may elect to seek payment for their

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[194]The per occurrence, combined single limits of insurance shall not be less than:

Each Occurrence	$ 1M
General Aggregate Limits	1M
Products - Completed Operations Limit	1M
Personal Injury Limit	1M

See id. at § 2.3.13(B)(3).

[195]U S WEST does not prohibit interconnector parking. Thus, it is appropriate to require that all interconnector vehicles are covered by appropriate insurance.

[196]It is common in lessor/lessee transactions for the lessor to require this kind of insurance coverage by the lessee.

injuries under the worker's compensation law or seek reimbursement directly from the employer, employer's liability insurance protects the employer against such employee claims.

U S WEST clearly should not be liable to pay for injuries to interconnector employees, since they are not U S WEST employees. But even more fundamentally, U S WEST should not be put in a position to have to debate the issue of U S WEST employment status with either an interconnector, an interconnector's employee, or a state bureaucrat. Should an interconnector not maintain workmen's compensation coverage in accordance with state mandates, U S WEST can envision just such a future debate.

Commercial General Liability insurance would cover liability losses arising out of an interconnector's operations or caused by its employees, that result in damage to the property of others or that result in injury to individuals on U S WEST's premises. U S WEST should not be liable to pay for losses that it did not cause. And, we should be able to assure ourselves (as well as those underwriters that we work with) that an interconnector occupying space in our central office has sufficient insurance to cover its own bad acts. Indeed, with regard to this kind of insurance, U S WEST requires that we be shown on the certificate of insurance as an "additional insured" to provide just that kind of assurance.[197]

Automobile liability insurance pays for liability arising out of the use of vehicles driven by interconnector employees

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[197] See U S WEST Tariff F.C.C. No. 1 at § 2.3.13(A)(2).